

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARIPRASAD SREEDHARAMURTHY,
MOHSEN BANAN, and
JOHN D. HOLDER

Appeal 2007-0138
Application 10/039,459
Technology Center 1700

Decided: May 2, 2007

Before CHARLES F. WARREN, PETER F. KRATZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b).

This appeal is not yet ripe for a decision on appeal because it is unclear what rejections are being maintained on appeal.

The Examiner advanced three grounds of rejection in the Final Office Action:

1. Claims 1-9 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over Holder (WO 99/66108);
2. Claims 10 and 14 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over Holder in view of Falster (US 5,919,302) and Kim (US 5,942,032); and
3. Claims 11-13 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over Holder in view of Falster and Kim and further in view of Luter (US 5,922,127). (*See* the Final Office Action of January 14, 2004.)

Appellants' appeal was taken from all three rejections. Each ground of rejection is listed in the "Grounds of Rejections to be Reviewed on Appeal" section of the Brief (Br. § vi) and each is treated under a separate heading in the "Arguments" section (Br. § v).

However, it is not clear from the Answer whether all three rejections are maintained on appeal. On the one hand, § (6) of the Answer states that the Appellants' statement of the grounds of rejection to be reviewed on appeal is correct. This implies that all three grounds of rejection are maintained. On the other hand, only one of the four references, Holder, is listed as evidence relied upon (Answer § (8)) and only one of the rejections is reproduced in the Answer, the rejection of claims 1-9 over Holder (Answer § (9)).

The Examiner must clarify the record. If the rejections not reproduced in the Answer have been withdrawn, the Examiner must file a communication so stating. If, on the other hand, the rejections were intended to be maintained, the Examiner must file a substitute Answer

Appeal 2007-0138
Application 10/039,459

listing all of the evidence relied upon, reproducing all the rejections maintained, and responding to all of the Appellants' arguments.

This remand to the examiner pursuant to 37 C.F.R. § 41.50(a)(1) is *not* made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) does not apply.

We ORDER this application

REMANDED

tf/ls

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